

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, : Case No. 1:20-cr-00142-1  
Plaintiff, :  
- v - : **Jury Trial, Day 7**  
ALEXANDER SITTENFELD, a/k/a : Wednesday, June 29, 2022  
"P.G. Sittenfeld," :  
Defendant. : 9:00 a.m.  
: :  
: Cincinnati, Ohio

**EXCERPTED PROCEEDINGS - RULE 29 MOTION**

BEFORE THE HONORABLE DOUGLAS R. COLE, DISTRICT JUDGE

For the Plaintiff: **EMILY N. GLATFELTER, ESQ.**  
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## PROCEDING S

(In open court at 2:01 p.m.)

— — —

THE COURT: Does the government intend to call another witness?

MR. SINGER: No, Your Honor.

THE COURT: So you're resting?

MR. SINGER: Yes, Your Honor.

THE COURT: So should we take a brief break?

MR. C. MATTHEW RITTGERS: Just a brief one.

THE COURT: Ladies and gentlemen of the jury, the government is resting its case, which means it's not calling any further witnesses at this time.

There's usually a little work that we need to do before the defense starts to put on its case, so we need to have a little conversation, and that will give you an opportunity to have a break.

We will be in contact when we're ready to go. It may take a little longer than usual, just because we're switching from one case to another here. I imagine you would be back by 2:30.

I would remind you not to discuss -- the government's case has rested. The case is certainly not over, so please do not discuss it amongst yourselves. Please do not do any research. Please do not communicate with anyone on the case.

1           If anyone attempts to communicate with you, please let me  
2 know, and please do not form any final opinions. While the  
3 government has rested its case, Mr. Sittenfeld still has to  
4 put on his.

5           The time for deliberating and forming opinions will be  
6 after all that is done. So have a good afternoon break.

7           (Jury out at 2:03 p.m.)

8           THE COURT: Mr. Rittgers, do you have a motion to  
9 make?

10           MR. C. MATTHEW RITTGERS: I believe it's Mr. Schuett,  
11 Your Honor.

12           THE COURT: Very well. Mr. Schuett?

13           MR. SCHUETT: May I approach?

14           THE COURT: You may. Is the jury clear, Scott?

15           COURTROOM DEPUTY: Yes.

16           MR. SCHUETT: May I proceed, Your Honor?

17           THE COURT: You may.

18           MR. SCHUETT: Your Honor, at this time we would make  
19 a motion for judgment of acquittal pursuant to Rule 29 on all  
20 six counts.

21           As part of our arguments, my thought was to go through it  
22 how it was grouped on the indictment 1, 2, 3, 5, 4, 6.

23           THE COURT: Very good.

24           MR. SCHUETT: I also intended to probably refer to  
25 things like in the indictment as phase one and phase two, if

1 that makes sense to the Court as well.

2 THE COURT: It does.

3 MR. SCHUETT: I intended to walk through the six  
4 counts separately in those bundles before addressing the  
5 underlying quid pro quo that kind of is at the foundation of  
6 all six, Your Honor.

7 THE COURT: Very good.

8 MR. SCHUETT: Your Honor, we believe that the motion  
9 for acquittal should be granted on all six counts to start  
10 because, aside from the stipulations, there's not sufficient  
11 evidence presented by the government to meet the standard,  
12 even though it is a lower standard here in Rule 29.

13 On Counts 1 and 2, the issue to address, to begin with,  
14 would be that the scheme or artifice to defraud in this case  
15 as it relates to honest services, Your Honor, the government  
16 has failed to provide sufficient evidence, even on a Rule 29  
17 standard, that there was this scheme or artifice to deprive  
18 another of honest services by Mr. Sittenfeld.

19 As we heard, he published through the FEC the checks that  
20 he received. Those were publicly disclosed checks. He did  
21 not conceal those checks in any way.

22 The names that were provided on those checks are the ones  
23 that were assigned on the FEC website. If there was a scheme  
24 to defraud, one would assume that he would have just taken the  
25 cash that was offered to him. He did not accept that.

1           There was discussions of cashier's checks that would have  
2    been the equivalent of cash, and he did not accept that. Then  
3    there was the issue with the corporation checks versus the LLC  
4    checks. Again, if there was some sort of scheme to defraud, a  
5    scheme to materially conceal, none of those were taken.

6           Mr. Sittenfeld, on multiple occasions, asked for the  
7    names of real people and real LLCs, which were then provided  
8    to the FEC and the --

9           THE COURT: Mr. Schuett, let me ask you a question,  
10    if I could.

11           So if he took even a legal contribution in exchange for a  
12    tacit agreement to provide some specific official action,  
13    would that not suffice to show a scheme to defraud for  
14    purposes of Counts 1 and 2?

15           MR. SCHUETT: If I'm understanding what you're  
16    saying, if there's a tacit bribery argument or agreement, that  
17    that would constitute a scheme to defraud. Is that the  
18    question?

19           THE COURT: That's what I'm asking. Is that  
20    sufficient scheme to defraud for purposes of an honest  
21    services violation?

22           MR. SCHUETT: I think the law is pretty clear that if  
23    that existed, yes, that that would -- bribery can be a scheme  
24    to defraud. Obviously, we believe that that has not been  
25    proven, which I was going to discuss later, but --

1 THE COURT: Sure.

2 MR. SCHUETT: -- if I understand what the Court's  
3 asking, yes, bribery could constitute a scheme to defraud. I  
4 think the law is pretty clear on that.

5 THE COURT: Okay. I just wanted to make sure that I  
6 was understanding correctly. Thank you.

7 MR. SCHUETT: Your Honor, he's not charged with any,  
8 as we've discussed at great length at times, any FEC  
9 violations, certainly nothing related to straw donors.

10 And I mean, if you look at the evidence that has been  
11 presented, it wasn't exactly clear. There was discussion at  
12 one point of the cash, but then Rob later said that someone --  
13 that he was giving him a check that was written from his  
14 partner and his partner's LLC.

15 So on that point, we would argue that that scheme to  
16 defraud has not been established. Again, we'll address the  
17 quid pro quo later, Your Honor.

22 MR. SCHUETT: We do, Your Honor, whether or not any  
23 rational trier of fact would believe that the element had been  
24 met, yes, sir.

25 THE COURT: Hasn't there been testimony that he was

1 aware that the names on the checks didn't match the actual  
2 source of funds, at least on a couple of occasions? I thought  
3 Mr. Ndukwe testified to that, didn't he?

4 MR. SCHUETT: I don't remember Mr. Ndukwe -- I  
5 remember discussion from Rob that at least that had been  
6 asserted. I mean, if you looked at the transcripts or watched  
7 the video, that it's not exactly that clear.

8 There are discussions of going to his network to retrieve  
9 LLC checks, not that it was some sort of the same cash, per  
10 se, but that they were going to their network funds to present  
11 these LLCs.

12 THE COURT: I guess, with regard to Mr. Ndukwe, it  
13 was that Mr. Sittenfeld knew that the money that Mr. Ndukwe's  
14 associate at work provided was, in fact, the source of that  
15 funds of Mr. Ndukwe. That's what Mr. Ndukwe testified, I  
16 think, right?

17 MR. SCHUETT: We're talking about Tung Nguyen?

18 THE COURT: Yes.

19 MR. SCHUETT: Sorry, Your Honor. That's not before  
20 the Court on these charges, Your Honor. That's not part of  
21 the scheme for Count 1 or Count 2. And whatever the jury  
22 wants to give that weight for intent certainly doesn't allow  
23 the government to meet their Rule 29 obligations for Counts 1  
24 and 2, Your Honor.

25 THE COURT: Okay.

1                   MR. SCHUETT: Moving on to Counts 4 and 6 for the  
2 extortion. Again, separate from quid pro quo bribery, to  
3 discuss just generally.

4                   We would submit there's no evidence offered that he used  
5 any sort of threats or violence towards the undercover agents  
6 to have them hand over donations.

7                   I understand that when you're in a position, an official  
8 elected position, there could be, perhaps, an undertone of  
9 coercion when it's connected to that office.

10                  But if you look at the conversations between  
11 Mr. Sittenfeld and Rob, there is not some sort of element of  
12 do this or else. There is not a coercive environment.

13                  Most of the time, Mr. Sittenfeld is very collegial,  
14 they're joking, they're laughing. There is not an effort by  
15 Mr. Sittenfeld, nor evidence has been presented of an effort  
16 by Mr. Sittenfeld, to create a coercive environment. In fact,  
17 in 20- --

18                  THE COURT: What about the statement, "I don't want  
19 you to be in a situation where I'm like no, Chin, I love you  
20 but can't"? How is that not coercive?

21                  I mean, how can it be that a rational trier of fact  
22 couldn't maybe find that to be coercive? Not saying that I  
23 find it to be coercive, but that isn't the standard, right?

24                  MR. SCHUETT: Understood, Your Honor. On that  
25 particular call and statement, if I understand correctly,

1 Counts 4 and 6 relate to the exchange between Rob and the UCES  
2 and Mr. Sittenfeld, not Mr. Ndukwe.

3 So that statement, for whatever value it may or may not  
4 carry, does not inform the Court on the sufficiency of  
5 evidence that would be needed for an extortionate charge with the  
6 agents, Your Honor.

7 THE COURT: So you're saying that statement can't  
8 form the basis for the charges that are set forth in 4 and 6;  
9 is that right?

10 MR. SCHUETT: As written in the indictment, correct,  
11 Your Honor.

12 THE COURT: Okay.

13 MR. SCHUETT: It's certainly listed in the general  
14 scheme, but it's not listed in the actual Counts 4 and 6,  
15 those related to the UCE donations. Mr. Ndukwe, in that  
16 conversation, no money was exchanged, there wasn't any  
17 official acts, there wouldn't --

18 THE COURT: Well, but what if Mr. Ndukwe had shared  
19 with Rob and Brian that statement, couldn't you have the  
20 indirect effect of --

21 MR. SCHUETT: Potentially, I suppose. But the burden  
22 was on the government to present that evidence. We certainly  
23 didn't hear that, Your Honor.

24 So I would -- again, I would say there's not a nexus to  
25 connect that statement from Mr. Sittenfeld to Mr. Ndukwe to

1       the extortion charges that exist in Counts 4 and 6, Your  
2 Honor.

3                   THE COURT: Okay.

4                   MR. SCHUETT: As I was stating, in 2019,  
5 Mr. Sittenfeld doesn't even solicit donations. I think it was  
6 pretty clear that Vinny, in September of 2019, he wasn't  
7 solicited to provide donations.

8                   Later, Rob volunteered again that they were going to give  
9 donations. There was not solicitation. There was no coercive  
10 environment. And so for those reasons, we would suggest to  
11 the Court that, again, discussing quid pro quo later, that the  
12 extortionate element there is not present.

13                  There was no fear. And even just because he is an  
14 elected official, he wasn't taking any action as that elected  
15 official to create an extortion-type environment, Your Honor.

16                  THE COURT: So with regard to phase one, phase two,  
17 do you think there has to be a separate threat in phase -- I  
18 guess what you're calling phase two, or I guess Count 6, there  
19 has to be a separate threat to form a basis for liability  
20 under Count 6?

21                  MR. SCHUETT: The dates within the indictment are  
22 separate, Your Honor. It's not a continuing course of -- and  
23 they give two very different dates that these charges are  
24 supposed to have occurred.

25                  So I would argue that, given the different scope of dates

1       that they've presented that, yes, there would need to be a  
2       separate extortive action or environment.

3           THE COURT: I have too many books.

4           MR. SCHUETT: Your Honor, if I may also grab the  
5       indictment? I didn't bring it up here.

6           THE COURT: I've got the indictment. That's what I  
7       was looking for.

8           You're pointing out that in Count 6, for example, it says  
9       from July 8, 2019, to on or about February 5, 2020,  
10      Mr. Sittenfeld knowingly, and then goes on.

11       So you're saying they have to point to some conduct that  
12      occurred between those two dates?

13       MR. SCHUETT: As I understand the notice they  
14      provided, yes, sir.

15       THE COURT: Okay. As opposed to Count 4, which is  
16      predicated on conduct that occurred from on or about  
17      September 21, 2019, to on or about September 17, 2019?

18       MR. SCHUETT: That is correct, Your Honor. That's  
19      our position.

20       THE COURT: Very good. All right. I can understand  
21      that.

22       MR. SCHUETT: Moving on, then, to the last coupling  
23      of Counts 3 and 5, which lead to the program with federal  
24      funds.

25       I wanted to reassert at this point, I know it hadn't been

1       decided earlier that, given that this is a campaign donation  
2       case, that for these particular charges, there is going to  
3       need to be an explicit quid pro quo.

4           Even as the statute is written, it does say there needs  
5       to be a specific intent to act corruptly and be influenced by,  
6       because there's a presumptive idea and legitimacy to campaign  
7       donations in order for that to be corrupt, and the influence  
8       by should be read as an explicit quid pro quo.

9           THE COURT: But not express, you'd agree? He's being  
10       explicit but not express, right?

11           MR. SCHUETT: Correct, Your Honor. It's my  
12       understanding that between the Sixth Circuit and Supreme Court  
13       has made it very clear that it does not need to be express.  
14       It does need to be explicit, though, Your Honor.

15           THE COURT: Okay.

16           MR. SCHUETT: And so I did want to turn to the  
17       concept, then, of the quid pro quo.

18           Your Honor, obviously, there are profound constitutional  
19       implications in this case when we are dealing with free  
20       speech, political speech, something that has been the hallmark  
21       of this country, one of the first protected right that we list  
22       in the Bill of Rights, and the chilling effect that it can  
23       have if politicians are not allowed to engage with  
24       constituents.

25           Donations are seen as, on innuendo or vague statements,

1 to be corrupt. There's also federalism concerns, with  
2 the U.S. Government coming in and telling local officials,  
3 based on vague inferences, that they are committing federal  
4 crimes.

5 It's obviously clear that not every donation, as the  
6 Court said in *Terry*, is a bribe in sheep's clothing.

7 There is a general expectation in this country that some  
8 future favorable action is not enough to prove quid pro quo.  
9 Seeking donations from donors and individuals with businesses  
10 in front of the legislative body that you happen to be on is  
11 not, in itself, enough to be quid pro quo.

12 It's not a crime, even if there's temporal proximity, in  
13 and of itself. The fact that there was a donation, and then  
14 an act close in time, without more, is not quid pro quo.

15 We want our politicians to be serving their constituents  
16 and supporting legislation. They want to be able to talk with  
17 them about their policy considerations and, obviously, those  
18 campaigns need to be financed.

19 So there's obviously a danger here, and it's unrealistic  
20 to believe that a legislator can commit a crime when they lay  
21 out the benefits for their constituents, when they hear from  
22 donors that may have business in front of the legislative  
23 body --

24 THE COURT: What about the statement "I'll shepherd  
25 the votes"?

1                   MR. SCHUETT: Yes, Your Honor. We would argue that,  
2 as noted by this Court, could be read in multiple different  
3 ways.

4                   THE COURT: But isn't that exactly the point? It  
5 could be read in multiple different ways, so then isn't it the  
6 jury's job to --

7                   MR. SCHUETT: Your Honor, at this point, I would  
8 actually argue that is a failure of the state to provide  
9 sufficient evidence. There was a specific official act  
10 discussed because the specific official act has to be  
11 pressure, convincing someone to vote, as opposed to expressing  
12 support.

13                  And if it was just expressing support, then they haven't  
14 met their burden, right? Because if it's just I support a  
15 project, or I support a policy, or I support crossing the  
16 aisle to shake hands in a bipartisan way --

17                  THE COURT: Well, but it's enough if it's just even  
18 an "I'll vote yes." It doesn't have to be I'll get the whole  
19 council to agree, right? Wouldn't it be an official act --  
20 and I'm not saying that the evidence shows this.

21                  But if Mr. Sittenfeld were to agree to vote himself in a  
22 particular way, he doesn't have to be able to deliver the  
23 whole council in order for it to be an official act, does he?

24                  MR. SCHUETT: Well, no. If he had said I will vote,  
25 but he didn't, one, Your Honor; and two, that it has to be in

1 exchange for the money, which also, we would argue, has not  
2 been linked.

3 So I think the vagueness in this situation actually, it  
4 goes against -- the government had the burden to prove  
5 sufficient evidence that this was a specific official act, and  
6 they haven't done so. And --

7 THE COURT: Isn't it that one conversation where it's  
8 like, well, I don't know if it's going to come in front of you  
9 in six months, or a year, or two years, but we need to know  
10 it's a yes when it does type thing? You know the comment to  
11 which I'm alluding?

12 MR. SCHUETT: Yes, Your Honor. And I mean, again,  
13 "can deliver the votes" is unclear. Again, the nexus to be  
14 controlled by money is lacking as well. And so, you know,  
15 again, somewhat of a team, this is like you take out a  
16 context, maybe, right, but they need to provide that nexus.  
17 They haven't done so.

18 And we would argue that those vague statements in 2018,  
19 about delivering votes and shepherding votes, do not rise to  
20 the level of sufficient evidence to prove, even at this  
21 juncture, even with a Rule 29 threshold, to send that matter  
22 to the jury.

23 As far as 2019, there's no statements being made by  
24 Mr. Sittenfeld regarding official acts. Again, it was he  
25 stood up to leave, or while he got up, he shook hands. It

1 sounded like he was leaving. It was, hey, come over here.  
2 There was not a nexus. There wasn't an official act, or even  
3 a specific official act that was discussed.

4 At that meeting, there was general discussion of how  
5 government works, and how zoning works, and when a city can  
6 handle certain things through licensing.

7 Though if you look at the entirety of that, that video, I  
8 believe it's 30F, as in Frank, while we only saw truncated  
9 versions, there's an entire discussion in session one that  
10 we've heard about multiple times but we didn't hear.

11 And in that, Rob and Brian are priming that concept of  
12 sports betting, and their concerns about Mr. Ndukwe as the  
13 face. And then they come in, and they start talking about it  
14 again.

15 And Vinny starts talking about how he's frustrated that  
16 it's going to be on a statewide level, which Mr. Sittenfeld  
17 then discusses he has no power in that, the way it works, and  
18 explains the mechanics of how it works; state, local, when  
19 they can zone and when they can't. But there's no commitment  
20 to any official act.

21 The most that you get is that Mr. Sittenfeld says he can  
22 put them in touch with Dan, which would just be setting up a  
23 meeting, which is not a specific official act.

24 And Vinny, when he says, hey, we're going to take care of  
25 you, which isn't illicit, in and of itself. That just means

1 we want to donate.

2 He says what I want you to do is keep Rob updated.

3 Again, that's not a specific official act. That's just  
4 relaying information.

5 And so we would submit there's not a specific official  
6 act at all. It was in the indictment for Counts 2, 5, and 6,  
7 but that are in that phase two that would rise to the level --  
8 even on a Rule 29 level to go to the jury, Your Honor.

9 As far as the in exchange for, we would also argue that  
10 there is not, one, an explicit quid pro quo, in that the  
11 agreement would be clear and understanding, unambiguous, that  
12 Mr. Sittenfeld expressed a manifest -- or manifested an intent  
13 to be controlled by the money for a specific official act.

14 And on that level would argue that then, because the quid  
15 pro quo is sort of the foundation for all six, that not  
16 showing the explicit clear understanding, and the fact that  
17 we're talking about what does deliver the votes means goes to  
18 that point, Your Honor, that there's not an explicit  
19 understanding on what it means.

20 And the government hasn't shown enough evidence to rise  
21 to that level.

22 For that reason, Your Honor, we would ask that you grant  
23 the motion on all six counts.

24 THE COURT: Thank you, Mr. Schuett.

25 Would the government like to respond?

1 MR. SINGER: Yes, Your Honor.

2 If I may, I'm just going to address the topics as  
3 they were raised by the defense.

4 THE COURT: Sounds good.

5 MR. SINGER: As to the honest services fraud relating  
6 to a scheme to defraud in Counts 1 and 2, that is rolled up in  
7 the quid pro quo. If there is a quid pro quo, then it  
8 necessarily is a concealment from the public, and that in  
9 itself indicates that intent to defraud.

10 As for Counts 4 and 6, the defense raised a lack of  
11 threats or inducement. That's the holding of the *Evans* case,  
12 Your Honor.

13                   Supreme Court said in *Evans* that there is no inducement  
14                   element for extortion under color of official right.

15           The Court said this is the holding, where a public  
16 official knowingly receives a bribe, that satisfies the Hobbs  
17 Act under color of official right. There is no inducement  
18 element. It's not like the other prongs, the other types of  
19 extortion.

20 THE COURT: So are you saying the elements for 4 and  
21 6 are identical to 1 and 2 or what?

22 MR. SINGER: For purposes of bribery, yes. Honest  
23 services bribery and extortion under color of official right,  
24 that's why the case law -- there's so much overlap on the case  
25 law for color of official right bribery cases and honest

1 services bribery cases.

2 THE COURT: I thought that was a problem, if you have  
3 two crimes that have exactly the same elements.

4 MR. SINGER: They don't have -- the bribery prong is  
5 the same. They have different jurisdictional elements.

6 THE COURT: Oh, I see. Okay.

7 MR. SINGER: So for honest services fraud, there must  
8 be a wire, or there must be some affect on interstate commerce  
9 for the Hobbs Act.

10 THE COURT: Okay.

11 MR. SINGER: But the Supreme Court is very clear that  
12 there is no inducement. The inducement comes by the fact that  
13 they're public officials, and so there is an innate presence  
14 and authority over the decisionmaking that creates an  
15 imbalance.

16 THE COURT: In the presence of a quid pro quo?

17 MR. SINGER: Yes. Yes.

18 THE COURT: Okay.

19 MR. SINGER: And so wherever a public official  
20 knowingly receives a bribe, that's enough to satisfy the  
21 elements both for honest services fraud and the extortion  
22 count.

23 For Counts 3 and 5, the 666 charges, the Sixth Circuit is  
24 clear that there is no quid pro quo requirement, that the  
25 Sixth Circuit looks at the elements of the -- the statutory

1       language when determining the elements, and the statutory  
2       language includes a corrupt intent to either be influenced or  
3       rewarded in connection with business that's before the city.

4           Now, this is a campaign contribution case, so as the  
5       Court has recognized in the jury instructions that we filed,  
6       the business has to be specific business. So it would mirror  
7       the -- sort of the specific official action in that regard  
8       that has to relate to a specific project or a specific  
9       business, otherwise, it would be a more general business that  
10      would be allowable under 666.

11           But that element is satisfied here, Your Honor, because  
12       the 435 Elm Street project is the subject matter of both  
13       Counts 3 and Count 5.

14           So all of the conversations relating to money in exchange  
15       for some business before the city, it all relates to the  
16       specific business that is advancing the 435 Elm Street  
17       project.

18           THE COURT: With respect to Count 5 and the 2019/'20  
19       time frame, where are you getting -- I'm looking at, I guess  
20       it's Count 3, but I assume the elements are the same,  
21       corruptly solicited and demanded.

22           So are you saying that what occurred in the hotel room,  
23       where in the video it appeared Mr. Sittenfeld was getting up  
24       to leave, and then Vinny raised the two checks, are you saying  
25       something -- where am I going to find the soliciting or

1 demanding in that -- well, let me start with this.

2 Is that what you're saying was the soliciting or  
3 demanding, was that vignette?

4 MR. SINGER: No, Your Honor. I don't believe Count 5  
5 has solicitation language. The solicitation comes from -- is  
6 in Count --

7 THE COURT: Count 5, corruptly solicited and demanded  
8 for his own benefit, and accepted and agreed to accept a thing  
9 of value from a person intended to be influenced and rewarded  
10 in connection.

11 MR. SINGER: So we charged in the conjunctive, Your  
12 Honor. I think the evidence will show that he accepted and  
13 received the money corruptly and in exchange or in connection  
14 with the business of the city.

15 THE COURT: Oh, it says "and" in the indictment. It  
16 says, Corruptly solicited and demanded for his own benefit and  
17 accepted and agreed to accept, so you're saying it's an "or"?

18 MR. SINGER: Well, when it goes to the jury, it will  
19 be an "or."

20 THE COURT: Oh. Okay. Why is that? This isn't the  
21 quote from the statute, or what?

22 MR. SINGER: Well, it is a quote from the statute,  
23 Your Honor, but we include more language in the indictment.

24 THE COURT: Oh, I see.

25 MR. SINGER: The jury can decide any one of those.

1       They don't have to find that each one of them occurs.

2                   THE COURT: So you're saying he did A and B, and both  
3                   A and B are wrong, but if either A or B happened, that would  
4                   be --

5                   MR. SINGER: Correct.

6                   THE COURT: So you're focused on the intending to be  
7                   influenced and rewarded?

8                   MR. SINGER: Correct.

9                   THE COURT: Okay.

10                  MR. SINGER: And the corrupt intent when it's  
11                  accepted or agreed to accept.

12                  THE COURT: Okay.

13                  MR. SINGER: So there is no quid pro quo requirement,  
14                  and so I'll address the --

15                  THE COURT: For Count 5?

16                  MR. SINGER: For Counts 3 and 5, Your Honor.

17                  THE COURT: But for 1, 2, 4, and 6, there is?

18                  MR. SINGER: Correct.

19                  THE COURT: Okay.

20                  MR. SINGER: And I think the Court's analysis in  
21                  denying the motion to dismiss, this is instructive here. As  
22                  you know, the speaking indictment, with a lot of the same  
23                  recordings that were played here, are contained in the  
24                  indictment. The Court found that based on just the limited --  
25                  that the lesser amount of evidence that was provided in the

1       indictment, that a reasonable jury could find that there was a  
2       quid pro quo both for the 2018 exchange in Counts 1, 3, and 5,  
3       and the 2019 exchange for 2, 4, and 6.

4                   THE COURT: Okay.

5                   MR. SINGER: I'm happy to answer any questions the  
6       Court has relating to that, otherwise, I will sit down.

7                   THE COURT: Very good.

8                   MR. SINGER: Thank you, Your Honor.

9                   THE COURT: Mr. Schuett, anything further?

10                  MR. SCHUETT: Yes, Your Honor, if I may?

11                  THE COURT: You may.

12                  MR. SCHUETT: I'll address the matter that Mr. Singer  
13       just left on. Corrupt intent, or corrupt intent to be  
14       influenced by, when read in the lens of a campaign donation,  
15       can only mean one thing, which is explicit quid pro quo,  
16       because there's a presumption of legitimacy for campaign  
17       donations and speech. And so to cross the line, the courts  
18       have been clear you need explicit quid pro quo.

19                  So while the statute -- and Abbey certainly addressed is  
20       it a requirement in all cases? No. But in this case, it is,  
21       because their own -- this isn't a plus factor case, Your  
22       Honor. We don't have gifts.

23                  And on all of the cases that have been cited by the  
24       government so far have been plus factor cases. And so we  
25       don't have that. And at the close of their evidence, we don't

1 have that.

2 And so inherently, it must be an explicit quid pro quo in  
3 this particular case, under these particular facts, and with  
4 the law being what it is for campaign donations, that they can  
5 only have a corrupt intent to be influenced by with campaign  
6 donations if it's an explicit quid pro quo.

7 As far as the Hobbs Act, I would note that it was as if  
8 they knowingly received a bribe, and which would call back to  
9 they haven't shown that he knowingly received a bribe.

10 There are two -- there's a lot to unpack there in that  
11 phrase that they still haven't shown, so even if they haven't  
12 shown generalized extortion, they also haven't shown that he  
13 knowingly received a bribe for all of the reasons that I've  
14 already articulated, Your Honor.

15 If there's no further questions, again, we would ask that  
16 you dismiss all counts.

17 THE COURT: Thank you, Mr. Schuett.

18 MR. SCHUETT: Thank you, Your Honor.

19 THE COURT: Well, I think, at the end of the day, I  
20 knew this motion was coming, not surprisingly, and I think, as  
21 things stand right now, the statements that we've heard from  
22 the various witnesses, there's sufficient ambiguity in them  
23 that a jury could find -- certainly, I don't think is  
24 compelled to find, but could find that a quid pro quo exists.

25 And I think, if that is the case, that would defeat the

1 motion as to all six of the counts, so the Court, on the  
2 record right now, is denying the request for a Rule 29 motion.

3 I think the government has presented sufficient evidence  
4 to go to the jury on all six counts. I'll note that, unlike  
5 *Dimora*, or a lot of the other cases, certainly, the conduct  
6 here that's been presented by the government doesn't seem as  
7 explicitly egregious as some of the conduct that has occurred  
8 in other cases. But as the parties are also aware, there is  
9 case law there suggesting that wink wink nudge nudge is enough  
10 to suggest the existence of an agreement.

11 And in light of where the case law is on what's necessary  
12 to show an agreement, I believe that, at least right now, the  
13 government has shown enough to get to the jury, so I'm going  
14 to deny the motion.

15 With that, we can take a very brief break. How long do  
16 you need to be in a position to start with your case,  
17 Mr. Rittgers?

18 MR. C. MATTHEW RITTGERS: Should not be long, Your  
19 Honor. Have to take a quick break and make sure the witness  
20 is here.

21 THE COURT: So can we try to get started by 2:45?  
22 That will only be about 10 minutes. Is that enough for  
23 everybody? Okay. Very good. Let's take a recess.

24 (Brief recess.)

25 THE COURT: And I should make clear on the record, I

1 realized I hadn't before I left, Mr. Schuett, that the Court's  
2 denial -- it comes up mid-trial, oral motions. The Court's  
3 denial of the Rule 29 is not prejudiced, of course, to the  
4 defendant's ability to renew the motion at the end of the  
5 trial.

6 MR. SCHUETT: Understood, Your Honor. Thank you very  
7 much.

8 (Excerpt of proceedings concluded at 2:47 p.m.)

9 \* \* \*

10 C E R T I F I C A T E

11 | - - -

12 I, M. SUE LOPREATO, RMR, CRR, certify that the foregoing  
13 is a correct transcript from the record of proceedings in the  
above-entitled matter.

14

15        /s/ M. Sue Lopreato  
16        M. SUE LOPREATO, RMR, CRR  
16        Official Court Reporter

August 24, 2022

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